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PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF PETITION FILED HEREIN ON AUGUST 14, 1928.

Supreme Court of the United States

OCTOBER TERM, 1928

No. 347

JOHN MARTIN RIEHLE, AS RECEIVER IN EQUITY OF THE MOHOSCO HOLDING COMPANY, INC., PETITIONER,

vs.

EDWARD MARCOLIES

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petition for Certiorari filed August 14, 1928.
Certiorari granted October 22, 1928.
(32,656)

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The question submitted by the petitioner herein to this Honorable Court is clearly set forth in the petition. It is: Is a judgment obtained in a State Court (against a corporation) subsequent to the appointment of a Receiver in Equity in a proceeding brought in the United States District Court (the action in which such judgment was obtained having been instituted prior to the appointment of such Receiver) binding upon the Receiver, where the United States District Court has, upon application of the judgment-creditor, refused to direct the Receiver to defend the action in the State Court?

The authorities seem clear on the right of a District Court, in an equity proceeding such as the one in which the matter before this Court arose, to decide for itself the claims urged against the receivership estate.

It has been held by the United States Supreme Court that when a corporation is placed in the hands of a Receiver of the United States Court, such appointment draws to the jurisdiction of that Court the control of its assets so far as persons having claims to participate in the distribution of such assets are concerned, and the parties must go into that Court in order to assert their rights, prove their demands, and receive whatever may be due them, on their claim of interest in the estate.

> [illegible] v. [illegible], 139 U. S. 96, at p. 99

The receivership draws to this jurisdiction all litigation necessary to wind up the involved corporation and distribute its assets legally. The constitutional provision for trial by jury does not restrict or affect the jurisdiction of a Chancery Court as it existed at the time of the adoption of the Constitution.

> [illegible] v. [illegible], 92 U. S. 92, at p. 100

It is for the Federal Court, in its discretion, to determine of itself all claims against the Receiver of the corporation, and it may, in the exercise of a proper discretion, have such matters litigated in another tribunal against the Receiver, or it may assume to itself the determination thereof.

> [illegible] v. [illegible], 140 U. S. 91, 97
> [illegible] v. [illegible], 99 U. S. 700
> [illegible], 102 U. S. 112.

In the matter before this Honorable Court, the District Court for the Northern District of New York on two occasions decided that it would be for the best interests of

the enforceability under that the "Bangalore" claim can be law have entered to throughout the equity proceedings be litigated in the United States District Court.

A large part of the claimant-appellee's argument (the petitioner's opponent) is directed towards the contention that the claimant, Bangalore, had a right to obtain his claim to judgment irrespective of the conduct of the federal bankruptcy proceedings. That proposition is not in dispute. The Circuit Court of Appeals for the Second Circuit has so held, as is recorded in the facts set forth in the petition herein, and that question is not here involved. The questions here decided do not in any way affect the judgment which the claimant Bangalore may obtain or attempt to in the State Court (in preference to an adjudication in the Federal Court) in binding upon the Bankrupt which the Bankrupt was bankrupt told by the Circuit Court of Appeals for the Second Circuit and by the District Court that the pendency of the State Court action was an effect of the

The claimant Bangalore also contends which overlook the fact that the costs and attorneys' fees, which have been paid over both to promoters of the United States Court as the time the Bangalore State Court judgment came into existence. The Circuit Court of Appeals itself, in its last opinion (the opinion which is referred to as a "further unpublished opinion" in the petition herein), recognizes the fact that a holding to the effect that a State Court judgment is binding upon the circumstances set forth in the petition herein "requires the jurisdiction of the District Court over cases already in its custody [like the judgment of the State Court was entered]." The Circuit Court of Appeals for the Second Circuit in these two cases indicates that it is now appreciative of the futility of bankruptcy proceedings. The distribution of [illegible], after the United States District Court has taken possession of the assets, is does not affect the right to set aside liens. As a matter of fact, the Circuit Court of Appeals for the Second Circuit, in its opinion, which is printed on page 47 of the Transcript of Record herein,

[illegible] "Then [the Circuit Court of Appeals for the Second Circuit] believes that the liquidation of claims is a part of the distribution of the assets, since it determines how much each creditor shall get, and that the distribution of the assets is part of what is usually understood as jurisdiction over the res."

The adoption of the Circuit Court's doctrine as controlling by this Honorable Tribunal would compel relitigation for all time the possibility of that which should be conclusive once upon becoming finality.

Respectfully submitted,

[illegible]

[illegible]

[illegible]